

**Notice of Allowability**

Application No.

09/329,487

Examiner

Marc E. Norman

Applicant(s)

KRISS ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Appeal Brief filed 2 January 2004.
2. ☒ The allowed claim(s) is/are 1-49.
3. ☒ The drawings filed on 10 June 1999 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### REASONS FOR ALLOWANCE

Claims 1-49 are allowed.

The following is an examiner's statement of reasons for allowance:

The Examiner accepts certain of Applicant's arguments set forth in the Appeal Brief (paper #18) that the combined teachings of Ando/Yamamoto and Egol do not render obvious Applicant's invention, as set forth in independent claims 1, 30, 39, and 43. While the Examiner does not agree with several of Applicant's assertions (most particularly that Ando is strictly concerned with future sales and that the sample shop of Ando/Yamamoto is simply a mathematical model rather than an actual shop), the Examiner does accept that the combined references do not establish a *prima facie* case of obviousness regarding the final step in each of these claims of *estimating the purchases by customers of the supplier of interest from other suppliers*. A more detailed analysis follows:

As per independent claim 1, Ando (and, in greater detail, Yamamoto as discussed in the preceding Office Actions) teaches:

- reading data regarding purchases made by panelists (at a sample shop) from a supplier of interest (value in parentheses at column 8, line 18 of Yamamoto), wherein the panelists are a subset of the customer base of the supplier of interest (i.e., from a sample shop of the supplier of interest), and
- reading customer data regarding purchases by the customer base of the supplier of interest (numerator value at column 8, line 22 of Yamamoto).

The Ando and Yamamoto references do not teach reading panelist data regarding purchases made by the panelists from other suppliers, determining a relationship between purchases from

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the supplier of interest and purchases made by the panelists from the other suppliers, or estimating the purchases made by the customer base of the supplier of interest from the other suppliers.

Egol teaches reading panelist/survey data regarding purchases made by the panelists from other suppliers (lines 22-23). <sup>pr. forms</sup> However, Egol <sup>for the</sup> does not teach using this information to ~~explicitly~~ <sup>to track customer purchase patterns with competitors (lines 25-26))</sup> determine a relationship between purchases from the supplier of interest and purchases made by ~~the panelists from the other suppliers and then estimate the purchases made by the customer base of the supplier of interest from the other suppliers.~~ <sup>while Egol does not specifically teach scaling up the panelist data to the entire customer base,</sup> It would therefore not have been obvious to one of ordinary skill in the art at the time of the invention, without undue hindsight, to arrive at the invention of independent claim 1 in light of the combined teachings of the applied references.

As per independent claims 30, 39, and 43, the combined references similarly fail to reasonably suggest or render obvious the final step of estimating the purchases made by the customers of the supplier of interest from the other suppliers.

For the record, the Examiner notes concern that Applicant's invention (at least as recited in independent claims 1, 30, 39, and 43) might in fact be a commonly performed business practice in the arts of market analysis and competitive intelligence, but one which has not been explicitly written about. The prior art is full of references that discuss the importance of learning about the practices of one's competitors. However, after an exhaustive search of the prior art (U.S. patents, foreign patents, non-patent literature, and internet searches, as well as a disclosure requirement to Applicant under 37 C.F.R. 1.105), the Examiner has failed to uncover prior art references that either directly anticipate or clearly establish a *prima facie* case of obviousness for Applicant's claimed invention. Further, in response to the requirement under 37 C.F.R. 1.105,

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Applicant did not provide any prior art related to the claimed invention and explicitly stated that "No prior art search was conducted." (paper #11, page 13) Accordingly, the Examiner has no choice but to allow the claims.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The ACNielsen Consumer Insight Magazine article discusses ACNielsen's Homescan Cross Outlet\*Facts product for determining how much customers are buying from competitors.

The Cassano reference discusses use of the ACNielsen Homescan Consumer Panel service to track consumer sales.

The Parks reference presents research analyzing purchasing trends of cross-channel shoppers.

Mitchell et al. provides analysis of customer store loyalty perceptions.

Abe et al. provides an analysis of the use of panel purchase data in estimating store sales.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc E. Norman whose telephone number is 703-305-2711. The examiner can normally be reached on Mon.-Fri., 8:00-5:30, with first Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Esquivel can be reached on 703-308-2597. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MN



**MARC NORMAN**  
**PRIMARY EXAMINER**